

TRANSPORT (SCOTLAND) ACT 2019

EXPLANATORY NOTES

THE ACT

Part 9 – Road Works

Safety measures for the carrying out of works in roads

Works in roads: safety measures: [section 115](#)

495. Section 115 of the Act makes a number of changes to the 1984 Act concerning the safety of road users while works that involve the road being excavated or obstructed in some way are carried out.
496. Section 60 of the 1984 Act imposes a variety of requirements on anyone who obstructs or digs up a road. This includes such things as ensuring that there are adequate lighting measures in place for oncoming traffic to see the work and having sufficient fencing and signage in place. As matters stand, these requirements do not apply to roads authorities themselves when carrying out works in roads.
497. Subsection (2) of section 115 of the Act therefore imposes this duty on roads authorities, making such authorities subject to the same safety requirements as other people who may obstruct or dig up roads. Where a roads authority fail to comply with this duty, rather than commit an offence, they breach a statutory duty and may be forced to comply with the requirements under section 45(b) of the Court of Session Act 1988.
498. Subsection (3) of section 115 inserts section 60A into the 1984 Act. This new provision enables the Scottish Ministers to issue or approve¹ codes of practice in respect of the requirements of section 60 of the 1984 Act. This means that the Scottish Ministers will be able to provide much more detail about the kind of actions that a person who is obstructing or digging up a road must take. It also provides for the consequences where a person complies (or fails to comply) with a code. Following on from the changes made to section 60 of the 1984 Act outlined above, a code of practice will apply to anyone obstructing or excavating a road, including the roads authority for that road.
499. The power to issue or approve ‘codes’ (as opposed to a code) envisages that the Scottish Ministers may make or approve different codes and so provides a measure of flexibility. This could enable codes in respect of particular requirements (such as one focusing on lighting) or a code covering multiple aspects.
500. The new provision is similar to section 124 of the 1991 Act. That provision enables the Scottish Ministers to issue or approve codes of practice for undertakers in respect of certain kinds of road works. It is expected that the codes issued or approved under section 60A of the 1984 Act will follow a similar approach and, indeed, it is possible that a combined code may be issued or approved.

¹ As is currently the case for other codes of practice under the 1991 Act, codes are likely to be prepared initially by the Roads Authorities and Utilities Committee for Scotland and passed to the Scottish Ministers for approval through the Scottish Road Works Commissioner.

*These notes relate to the Transport (Scotland) Act 2019
(asp 17) which received Royal Assent on 15 November 2019*

501. Provided that a person or a roads authority complies with the code of practice, the person will be treated as complying with the requirements of section 60(1) or, in the case of a roads authority, section 60(3A) of the 1984 Act. The significance of this is that it means that a person carrying out works can have confidence that if they meet the standards of the code then they will not be liable to prosecution under section 60(3) for failing to fulfil their duties (and similarly that a roads authority who complies will not face any enforcement proceedings). The converse is also true. If a person (or authority) fails to comply with the code, that will be evidence for the purposes of a prosecution or enforcement proceedings for a failure to meet the requirements of section 60.
502. Subsection (4) of section 115 increases the penalty for the offences in section 60 of the 1984 Act from level 3 to level 5 on the standard scale. At present, a level 3 fine is £1,000 and a level 5 fine is £5,000. This brings the penalties into line with those for similar offences under section 124 of the 1991 Act.